

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

11 SAMUEL THOMAS McCUALEY, 1:13-cv-00582-MJS (HC)
12 Petitioner,
13 v.
14 M.D. BITER,
15 Respondent.

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18 Petitioner, a state prisoner proceeding pro se, has filed a habeas corpus action
19 pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis pursuant
20 to 28 U.S.C. § 1915.

21 The federal venue statute requires that a civil action, other than one based on diversity
22 jurisdiction, be brought only in "(1) a judicial district where any defendant resides, if all
23 defendants reside in the same state, (2) a judicial district in which a substantial part of the
24 events or omissions giving rise to the claim occurred, or a substantial part of the property that
25 is the subject of the action is situated, or (3) a judicial district in which any defendant may be
26 found, if there is no district in which the action may otherwise be brought." 28 U.S.C. §
27 1331(b).

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1 However, venue for a habeas action is proper in either the district of confinement or the
2 district of conviction. 28 U.S.C. § 2241(d). The district court for the district wherein such an
3 application is filed in the exercise of its discretion and in furtherance of justice may transfer the
4 application to the other district court for hearing and determination. Id.

5 It is preferable for petitions challenging a conviction or sentence to be heard in the
6 district of conviction while petitions challenging the manner in which the sentence is being
7 executed be heard in the district of confinement. Dunne v. Henman, 875 F.2d 244, 249 (9th
8 Cir. 1989). In this case, Petitioner is challenging terms of his sentencing and conviction from
9 San Diego County, California. As San Diego County is located in the Southern District of
10 California, the Southern District of California is the district of conviction. In the interest of
11 justice, the petition will be transferred to the United States District Court for the Southern
12 District of California. 28 U.S.C. §§ 1404(a) and 2241(d).

13 Accordingly, IT IS HEREBY ORDERED that this matter is transferred to the United
14 States District Court for the Southern District of California.

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16 IT IS SO ORDERED.

17 Dated: April 25, 2013

/s/ Michael J. Leng
UNITED STATES MAGISTRATE JUDGE

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